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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/826,763

04/16/2004

Jefferson L. Patrick

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MARK CLODFELTER  
555 SPARKMAN DRIVE  
SUITE 1602D  
HUNTSVILLE, AL 35816

EXAMINER

OLSON, MARGARET LINNEA

ART UNIT

PAPER NUMBER

3782

MAIL DATE

DELIVERY MODE

07/18/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/826,763

Applicant(s)

PATRICK, JEFFERSON L.

Examiner

Margaret L. Olson

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Toivola (US 6,162,052). Toivola discloses an accessory rack for transporting small boats on a transporting vehicle with front and rear platform sites. The rack has front and rear assemblies (figure 1) with a bottom member 30 connectable to a platform site, upright posts 40 with a top and bottom end, a boat receiving cross member 50/60 connected to the top of the upright posts, and an elongated upper beam member 20 attached in between the ends of the cross members at a central location thereof.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3782

4. Claims 2 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toivola (US 6,162,052) in view of Young (US 5,458,389). Toivola discloses that the rack's posts and members are made of rectangular material. Toivola does not disclose that the rack's posts and members are made of metal. Young teaches that it is well known in the art to make carrier racks for vehicles of rectangular metal such as steel (column 3, lines 2-5). It would have been obvious to one of ordinary skill in the art at the time of invention to make the posts and members of the rack of Toivola from rectangular metal, since metal is a strong and durable material suitable for this application, and it is well known in the art to make carrier racks of metal.

With respect to claim 8, Toivola discloses an accessory rack for transporting a small boat on an ATV. The rack has front and rear assemblies mounted on front and rear platform sites (figure 1) with a bottom member 30 connectable to a platform site, upright posts 40 with a top and bottom end, a boat receiving cross member 50/60 connected to the top of the upright posts, and an elongated upper beam member 20 attached in between the ends of the cross members at a middle portion. Toivola does not have overlapping vertical posts with vertically spaced holes allowing connecting bolts to secure the upright posts at different heights. Young discloses a carrier rack for a vehicle with an upright post 14 with overlapping tubing sections 30,32 that have a series of vertically spaced-apart holes 44/56 for inserting a connecting bolt 34 to position the upright posts at different heights (column 3, lines 18-30). It would have been obvious to one of ordinary skill in the art at the time of invention to form the upright posts 40

of overlapping members with means to secure them together in order to adjust the height of the carrier rack for different loads and terrain.

5. Claims 3, 4, 5, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toivola (US 6,162,052) in view of Young (US 5,458,389) as applied to claim 2 above, and further in view of Vieira et al. (US 5,560,666). Toivola as modified above does not disclose upturned arms at each end of the cross member. Vieira et al. teach upturned arms on both cross members of a vehicle accessory rack, labeled on one cross member at 62 and 60 (figure 1). It would have been obvious to one of ordinary skill in the art at the time of invention to include upturned arms on the cross members of Toivola in order to prevent the load from sliding (Vieria et al.; column 5, lines 30-32).

With respect to claim 4, Toivola, as modified above, does not have overlapping vertical posts with vertically spaced holes allowing connecting bolts to secure the upright posts at different heights. Young teaches a carrier rack for a vehicle with an upright post 14 with overlapping tubing sections 30,32 that have a series of vertically spaced-apart holes 44/56 for inserting a connecting bolt 34 to position the upright posts at different heights (column 3, lines 18-30). It would have been obvious to one of ordinary skill in the art at the time of invention to form the upright posts 40 disclosed by Toivola of overlapping members with means to secure them together in order to adjust the height of the carrier rack for different loads and terrain.

With respect to claim 5, the primary reference Toivola discloses that the transporting vehicle is an ATV.

10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Toivola (US 6,162,052) in view of Vieira et al. (US 5,560,666) and Young (US 5,458,389), as applied to claim 5 above, and further in view of Muzzi et al. (US 5,662,451). Toivola, as modified above, does not disclose U-bolts connecting the structure to the platforms of a vehicle. Muzzi et al. teaches a carrying rack structure with a vertical member attached to the front and back rack of an ATV (figure 1) with U-bolts. It would have been obvious to one of ordinary skill in the art to use U-bolts to connect the modified carrying rack to the platforms of an ATV, as they are the conventional fasteners for such a purpose (Muzzi et al.; column 5, lines 18-35).

### ***Response to Arguments***

6. Applicant's arguments filed 4/23/07 have been fully considered but they are not persuasive. Applicant argues with respect to claim 1 that the Toivola patent does not have a post connected to a central location of a boat receiving cross-member. Toivola does have a post 40 connected to a boat-receiving cross member 50 in a central location of the receiving member 50, since it is attached between the two ends of the member. Toivola discloses all the limitations of claim 1.

The applicant argues with respect to claim 8 that the Toivola patent does not have a post connected to a middle portion of a boat receiving cross-member. Toivola does have a post 40 connected to a boat-receiving cross member 50 in a middle portion of the receiving member 50, since it is attached between the two

ends of the member. The applicant also argues that there is no motivation in Toivola to combine the height-adjustability of Young with Toivola. The motivation to combine Toivola with Young is found in Young, in column 1, lines 51-64. In order to fit different vehicle configurations, it is desirable for a vehicle-mounted carrier to have an adjustable height. The combination of Toivola with Young is suggested and proper.

With respect to claim 3, the Applicant argues that Toivola does not teach the upturned arms at the rack ends in the combination of Toivola, Young, and Viera et al., and that since Toivola has straps and buckles, the arms are unnecessary. The motivation to combine Viera et al. with Toivola as modified by Young is found in Viera et al., in column 5, lines 30-32. It is desirable for vehicle-carried racks to have upturned ends so that the carried cargo will not slide off the rack. The combination of Viera et al with Toivola and Young is suggested and proper. In addition, Viera et al. teaches that the vehicle-mounted rack 35 has straps to secure the cargo to the carrier rack, in addition to the upturned arms at the end of the rack (column 6, lines 27-34). It is well known in the art to have more than one method of securing cargo on a vehicle-mounted carrier, to ensure that it is very safely mounted.

With respect to claim 4, the applicant again argues that there is no motivation in Toivola to combine the height-adjustability of Young with Toivola. The motivation to combine Toivola with Young is found in Young, in column 1, lines 51-64. In order to fit different vehicle configurations, it is desirable for a

Art Unit: 3782

vehicle- mounted carrier to have an adjustable height. The combination of Toivola with Young is suggested and proper.

With respect to claims 2, 5, and 6, applicant argues that they are allowable since they depend from allowable claim 1. Claim 1 is not considered allowable at this time.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret L. Olson whose telephone number is (571) 272-9002. The examiner can normally be reached on MTWR, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544.



Art Unit: 3782

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER

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